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2       UNITED STATES DISTRICT COURT  
3       EASTERN DISTRICT OF NEW YORK  
4       - - - - -  
5       BENJAMIN CASE, ELIZABETH CATLIN,  
6       JENNIFER KLEIN, and MARK KUSHNER,  
7    Plaintiffs,  
8    Index No. 14-cv-9148 (AT)  
9       -against-  
10      THE CITY OF NEW YORK, NEW YORK CITY  
11      POLICE DEPARTMENT ("NYPD") CHIEF OF  
12      DEPARTMENT JOSEPH ESPOSITO, NYPD  
13      DEPUTY CHIEF BRIAN MCCARTHY, NYPD  
14      LIEUTENANT DAVID GROHT, NYPD SERGEANT  
15      LAWRENCE PAPOLA, SHIELD NO. 03646, NYPD  
16      OFFICER BENJAMIN ALMONTE, SHIELD NO.  
17      29182, NYPD OFFICER DANIEL CONFORTI,  
18      SHIELD NO. 26403, NYPD OFFICER FIRST  
19      NAME UNKNOWN ("FNU") DOWNES, SHIELD NO.  
20      UNKNOWN, NYPD OFFICER DMITRY TVERDOKHLEB,  
21      SHIELD NO. 27018, and NYPD OFFICER  
22      MICHAEL MALDONADO, SHIELD 23573,  
23    Defendants.  
24      - - - - -  
25

16    100 Church Street  
17    New York, New York  
18    September 12, 2017  
19    2:21 p.m.

20  
21      \*\*\* CONFIDENTIAL PORTION FROM PAGE 39, LINE  
22      16 TO PAGE 47, LINE 06 \*\*\*  
23  
24

25      CAPTION CONTINUED ON NEXT PAGE

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1

2 EXAMINATION BEFORE TRIAL of SERGEANT  
3 BENJAMIN ALMONTE, the PLAINTIFF in the  
4 above-entitled action, held at the above  
5 time and place, taken before Garry J.  
6 Torres, a Shorthand Reporter and Notary  
7 Public of the State of New York, pursuant  
8 to the Federal Rules of Civil Procedure,  
9 and stipulations between Counsel.

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21 \* \* \*

22

23

24

25

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1                           B. ALMONTE

2         A.     Can you elaborate?

3         Q.     Sure. I asked you if you were  
4 involved in making or processing any  
5 arrests aside from the six that we had  
6 just discussed, the five at Mr. Case's  
7 arrest location and the one earlier and I  
8 believe you indicated, yes, you were  
9 involved in making or processing arrests  
10 other than those six.

11                          So I'm asking you now, what was  
12 your involvement in making or processing  
13 arrests aside from those six?

14         A.     Are you talking about what was  
15 my function that day?

16         Q.     No. Although what was your  
17 function that day?

18         A.     Case and day I was assigned to  
19 Brooklyn South Task Force. We were  
20 advised that we were going to a mass  
21 demonstration in the city and we were  
22 there to keep the traffic, pedestrians of  
23 free moving traffic and we might encounter  
24 protesters.

25         Q.     Okay. We'll get back to that

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1                   B. ALMONTE

2 other task force from the city would then  
3 meet at a location and assigned from head  
4 quarters and then we would make spot  
5 checks you can say, at different  
6 locations. I guess high priority  
7 locations you can say.

8                   So part -- during my time in  
9 Brooklyn South Task Force, of the seven  
10 years we did multiple assignments of Cobra  
11 and multiple times of those assignments  
12 was Wall Street also was one of the stops.

13                  Q. Are those kinds of spot checks  
14 also called visits?

15                  A. Visits.

16                  Q. Fair enough. Your memo book  
17 entries indicate you arrived in the area  
18 of Beaver and William at 9:45, correct?

19                  A. Yes.

20                  Q. As far as you know sitting here  
21 today, is that when you actually arrived  
22 there?

23                  A. I don't recall the time. That's  
24 what I wrote in my memo book.

25                  Q. Okay. Fair enough. And based

1                   B. ALMONTE

2     on your memory, what happened next after  
3     you arrived at the location?

4         A.     Okay. So we all -- we arrived  
5     at the location. At that point in time  
6     again, we couldn't -- I couldn't tell you  
7     exactly where I parked the van but I  
8     remember I parked a distance away and we  
9     all got out of the van, Sergeant Sobrado,  
10    myself and others that were in the van at  
11    the time. We got out, formed a single  
12    line walking Up to the intersection of  
13    Williams and Beaver.

14        Q.     Now, at this point to make life  
15    hopefully easier for us, I'm going to show  
16    you what's been marked as Almonte 1, which  
17    is a crude Google Map printout of the  
18    intersection and also what's been marked  
19    as DOWNES 4, which is a different Google  
20    Map printout of the intersection.

21        MR. OLIVER: I'm going to just  
22        put these in the front of the witness  
23        so that they're available for us to  
24        all try and orient ourselves.

25        Q.     When you formed the line and

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1                   B. ALMONTE

2                   walked up to the intersection, referring  
3                   to the map, can you tell me how you  
4                   approached the intersection? From which  
5                   street?

6                   A.       What I do recall is, I was  
7                   walking up the same -- I believe the same  
8                   direction of the vehicles that could not  
9                   go through.

10                  Q.       Explain to me what you mean.

11                  A.       So we had to use -- we were  
12                  walking up a single file. Sergeant in the  
13                  front, I'm behind him and a couple of  
14                  officers behind me in a single file  
15                  walking down the street. Now, the street  
16                  was that we were walking down -- I believe  
17                  we were walking down the same direction of  
18                  vehicles travelling that route.

19                  Q.       So you walking in the direction  
20                  that traffic flows on one of the streets?

21                  A.       Correct.

22                  Q.       But do you know if it was  
23                  William or Beaver?

24                  A.       No.

25                  Q.       Do you know if you approached

1                   B. ALMONTE

2         the intersection from the south, the  
3         north, the east or the west?

4         A.      Again, I was walking the same  
5         direction as traffic.

6         Q.      But you don't know which street  
7         you were walking on?

8         A.      I don't recall.

9         Q.      When you formed the line and you  
10        were walking, were you walking in the  
11        street, on the sidewalk or --

12        A.      On the street.

13        Q.      In the street. Okay. And were  
14        there nonpolice vehicles that were behind  
15        you when you were walking in the street?

16        A.      Yes.

17        Q.      And --

18        A.      Well, to the side of me. I was  
19        you know, because there were cars that  
20        were forced to be at a stop -- at a halt  
21        you can say. So we walked between the  
22        parked cars and the vehicles that were  
23        trying to get through. We were walking  
24        between that.

25        Q.      So the line that you formed

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1                   B. ALMONTE

2         walked in the street among traffic that  
3         you say was stopped; is that right?

4         A.     Correct.

5         Q.     So did you weave between cars?

6         A.     No.

7         Q.     No?

8         A.     We walked pretty much safely  
9         alongside of the parked vehicles on the  
10        street side.

11        Q.     There were parked vehicles that  
12        you were talking about?

13        A.     Right. To my recollection, yes.

14        Q.     So those were vehicles that were  
15        parked, not vehicles that were trying to  
16        proceed?

17        A.     Right. There were parked  
18        vehicles on my left and there were  
19        vehicles that were trying to proceed on my  
20        right.

21        Q.     As you were walking with the  
22        vehicle that were trying proceed on your  
23        right, could you see why they were not  
24        proceeding?

25        A.     Yes.

1                           B. ALMONTE

2       Q.     Why were they not proceeding?

3       A.     At the intersection of Williams  
4     and Beaver there was a large crowd  
5     refusing to disperse in the middle of the  
6     street.

7       Q.     Now, what do you mean by a large  
8     crowd?

9       A.     Many people formed together or  
10    standing together side to side in the  
11    middle of the intersection refusing to  
12    disperse.

13      Q.     So you're like -- how far away  
14    are you when you first observe this large  
15    crowd?

16      A.     Approximately -- I can say  
17    approximately 25 feet.

18      Q.     When you first observed the  
19    large crowd as you say, how many people  
20    were in as what you characterized as large  
21    crowd?

22      A.     Many people.

23      Q.     How many is many people in a  
24    number?

25      A.     I would have to say more than

1 B. ALMONTE

2 Q. During that couple of minutes,  
3 what did you observe that you remember, if  
4 anything?

5           A.     At the middle of the  
6 intersection on the street in the middle  
7 of Williams and Beaver intersection again,  
8 there was many people joined together in  
9 side to side at a halt in the middle of  
10 the intersection, protesting. When I say  
11 protesting I mean, being vocal to whatever  
12 they were saying or at that time and I  
13 remember at that specific time I believe  
14 we were waiting for the disorder control  
15 unit to come with their megaphone and give  
16 orders for them to disperse.

17 Q. Okay. So do you know -- at that  
18 point, do you know if there had been any  
19 orders to disperse that were given?

20           A.     We were waiting for them to give  
21     orders. Upon them arriving then I  
22     observed Sergeant Papola from disorder  
23     control unit with a megaphone. I call it  
24     megaphone. Some people call it a bull  
25     horn but with a megaphone sort of in a

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2 loud volume so people behind him -- I was  
3 behind him. I heard him clearly -- the  
4 protestors in front of him to hear him  
5 give the orders to disperse.

6                 Q. What orders to disperse did you  
7 hear him give?

8                 A. He said along the lines that  
9 they were obstructing I believe, vehicular  
10 traffic and that they had to disperse the  
11 location.

12                Q. Is that a quote or a general --

13                A. General.

14                Q. How many times did you hear him  
15 give that order?

16                A. I believe either two or three  
17 time.

18                Q. How much time elapsed between  
19 the first time he gave that order and the  
20 last time he gave that order?

21                A. A couple of minutes.

22                Q. Is that around two minutes?

23                A. It could have been anywhere  
24 between two to five minutes. I'm not too  
25 sure.

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1                   B. ALMONTE

2         A.     Yes.

3         Q.     When you saw that video,  
4     Sergeant Papola is speaking into a device,  
5     an amplifier, right?

6         A.     That's correct.

7         Q.     Do you know Deputy Inspector  
8     Raganella, R-A-G-A-N-E-L-L-A?

9         A.     I know him.

10      Q.     Did you see him on the video?

11      A.     I did see him on the video.

12      Q.     Where were you standing in  
13     relation to the two of them?

14      A.     I was behind them.

15      Q.     Could you see yourself standing  
16     behind them on the video when you watched  
17     it?

18      A.     No.

19      Q.     When Sergeant Papola gave those  
20     orders, he was in the road, right?

21      A.     Yes.

22      Q.     Behind him in the road were a  
23     number of fellow police officers, right?

24      A.     Right.

25      Q.     When the -- when Sergeant Papola

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1                           B. ALMONTE

2       Q.     Did you see Mr. Case locking  
3     arms with other people?

4       A.     Yes.

5       Q.     For how long did you see  
6     Mr. Case locking arms with other people  
7     before he was arrested?

8       A.     After the final order was -- I'm  
9     going to go forward. After the final  
10   order was given, they were standing but  
11   then when the final order was given, at  
12   that point they interlocked arms and sat  
13   on the intersection. At that point we  
14   went in to then arrest the individuals.  
15   So I went in. When I went in we all kind  
16   of needed several help for each person  
17   because they were interlocking. So  
18   everybody had to give an extra hand to try  
19   to pry open the arms and -- so your  
20   question was how long they -- how long was  
21   he -- what was the question again? I'm  
22   sorry.

23      Q.     How long did you see Mr. Case  
24     locking arms with other people before he  
25     was arrested?

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1                   B. ALMONTE

2         Q.     Now, aside from the person who  
3     you were involved in carrying to the  
4     wagon, how did you come to be associated  
5     with the arrests of Mr. Case and the other  
6     four people -- the other three people?

7         I'm sorry.

8                   MS. ROBINSON: Objection. You  
9     can answer.

10          A.     How did I -- I'm sorry.

11          Q.     Sure. So you were involved in  
12     carrying one person to the wagon, right?

13          A.     To the location, yeah.

14          Q.     Then when you got that location  
15     there were other people whose arrests you  
16     were assigned to process; is that right?

17          A.     That's correct.

18          Q.     Did you yourself pick who those  
19     other four people would be or did someone  
20     tell you who they would be?

21          A.     No, they were chosen for me.

22          Q.     Who chose them for you?

23          A.     If I'm not mistaken it was  
24     Lieutenant Hanlon.

25          Q.     What did Lieutenant Hanlon tell

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1                           B. ALMONTE

2 arrest?

3                           A. I am involved. I believe I am  
4 involved in his prosecution. I don't know  
5 what you're trying to get at. I'm sorry.

6                           Q. That's okay. That's fine. Any  
7 time you don't understand the question I  
8 can always rephrase it.

9                           So after Mr. Case was arrested  
10 he was prosecuted, do you know that?

11                          A. Well, he was given desk  
12 appearance ticket where he has to go to  
13 court for the violations indicated.

14                          Q. Right. What was suppose to  
15 happen at court as far as you understood  
16 it was that he was going to be prosecuted  
17 for those violations, right?

18                          A. Yes.

19                          Q. So were you involved in that  
20 prosecution?

21                          A. No, I was not. The DAT -- I  
22 don't recall.

23                          Q. Okay. Fair enough. Did you  
24 sign a criminal court complaint charging  
25 Mr. Case with violations?

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1                           B. ALMONTE

2                           A. Yes.

3                           Q. So you were involved in the  
4 prosecution?

5                           A. Yes.

6                           Q. Fair enough. Did there come a  
7 time where you met with the prosecutor to  
8 discuss what you observed Mr. Case do?

9                           A. Yes.

10                          Q. What did you tell the prosecutor  
11 that you saw Mr. Case do?

12                          A. What I observed.

13                          Q. I'm asking you to describe what  
14 you observed.

15                          A. More than what I already said  
16 earlier?

17                          Q. No. So please describe for me  
18 what you told the prosecutor with respect  
19 to your observations about Mr. Case. What  
20 did you tell the prosecutors?

21                          A. I don't recall exact -- my exact  
22 words.

23                          Q. Okay. Did you tell the  
24 prosecutor that you saw Mr. Case in a  
25 group of approximately 70 individuals; if

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1

2 CERTIFICATION

3

4 I, GARRY J. TORRES, a Notary Public  
5 for and within the State of New York, do  
6 hereby certify:

7 That the witness whose testimony as  
8 herein set forth, was duly sworn by me;  
9 and that the within transcript is a true  
10 record of the testimony given by said  
11 witness.

12 I further certify that I am not  
13 related to any of the parties to this  
14 action by blood or marriage, and that I am  
15 in no way interested in the outcome of  
16 this matter.

17 IN WITNESS WHEREOF, I have hereunto  
18 set my hand this 21st day of September,  
19 2017.

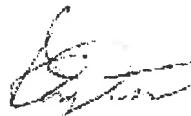
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GARRY J. TORRES